

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 2/27/2024
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY ZIELINSKI,

Plaintiff,

-against-

DANIEL MARTUSCELLO; CORRINE LEONE:
DAVID HOWARD,

Defendants.

24-CV-0150 (NSR)

ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, who currently is incarcerated at Woodbourne Correctional Facility, brings this action, *pro se*, under 42 U.S.C. § 1983, alleging that Defendants are violating his rights. By order dated February 22, 2024, the court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

To allow Plaintiff to effect service on Defendants Daniel Martuscello, the Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”); Corrine Leone, the Law Library Coordinator of DOCCS; and David Howard, the Superintendent of Woodbourne Correctional Facility, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to issue summonses, complete the USM-285 forms with the addresses for Daniel Martuscello, the Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”); Corrine Leone, the Law Library Coordinator of DOCCS; and David Howard, the Superintendent of Woodbourne Correctional Facility, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is further directed to mail an information package and a copy of this Order to Plaintiff.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 27, 2024
White Plains, New York

A handwritten signature in dark ink, appearing to read 'Nelson S. Román', is written over a light blue horizontal line.

NELSON S. ROMÁN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Daniel Martuscello, the Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”)
1220 Washington Avenue
Bldg 2
Albany, New York 12226-2050
2. Corrine Leone, the Law Library Coordinator of DOCCS
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3. David Howard, Superintendent of Woodbourne Correctional Facility
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